Saskatchewan
Energy and Mines

Mineral Rights in Saskatchewan

Mineral Revenue Branch
Saskatchewan Energy and Mines

October, 2000

101-03928/

Content

Introduction 2
Hudson's Bay Charter 2
Railway Grant System 3
Canadian Pacific Railway 3
Canadian National Railway 3
Land Companies and Homestead Grants 3
Natural Resources Transfer Agreement (NRTA) 4
Provincial Administration of Crown Mineral Lands 5
The Mineral Taxation Act, 1983 5
The Oil and Gas Conservation, Stabilization and Development Act, 1973 6
Trust Lands 7
Treaty Land Entitlement Agreements 8
Specific Claims Settlements 8

Introduction

Saskatchewan Energy and Mines is responsible for administering mineral rights owned by the provincial Crown and regulating the oil and gas industry in the province. The development of mineral rights in Saskatchewan requires an understanding of the basic history of mineral ownership in western Canada and federal and provincial policies related to the administration of mineral lands. This document provides an overview of some the important historical events that currently affect the development of oil and gas lands in the surveyed portion of the province.

Hudson's Bay Charter

On May 2, 1670 a charter was granted to "The Governor and Company of Adventurers of England" trading into Hudson's Bay (Hudson's Bay Company) of lands which covered most of Western Canada.

The Company held this charter and exercised the privileges conferred by it for slightly over 200 years, which included rights of governing and legislation together with the property of lands including precious metals. These rights were surrendered to Canada on June 22, 1870, with compensation, and were transferred to Canada on July 15, 1870.

Hudson's Bay Company agreed to accept £300,000 in cash, certain blocks of lands not to exceed 50,000 acres in the vicinity of their trading posts, and 1/20 of the lands in the so called "Fertile Valley Land Belt" which consisted of the following area: On the south by the United States - Canada boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan River; and on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them.

The method of reservation for the 1/20 of the "Fertile Valley Land Belt" was fixed by The Dominion Lands Act of 1872. Section 8 and three quarters of Section 26 (usually the S 1/2 & NW) were to be reserved to "The Company" and in townships divisible by 5 all of 8 and 26 were allotted.

It was estimated that this final settlement gave the company 7,031,257 acres of which 3,352,958 acres were located in Saskatchewan. In most cases when the company sold their lands to settlers, they retained the mineral rights.

In some areas of the province you will find that the company held large tracts of lands north of the North Saskatchewan River. This was due to the fact that exchanges were made for the southern lands close to the United States border for quarantine areas needed by the federal government for agricultural purposes.

The Hudson's Bay Company subsequently divested their large tracts of mineral rights through corporate restructuring and transfer programs to the provincial Crown and today the balance of mineral rights totaling 956,000 acres are held by various companies or individuals.

Railway Grant System

After the transfer of the Hudson Bay lands to Canada in 1870, a Dominion lands policy was put into effect to expand settlement in the Canadian West, this policy was basically a land grant system to railways, homesteaders and large land development corporations.

The railways were to receive 31,780,000 acres of land grants to subsidize their costs of building railroads and of the 3,630 miles of railways subsidized, less than 886 miles or 24% of the railways built were in Saskatchewan. However more than 15,193,000 acres of lands or nearly 1/2 of the railway land grants were selected from Saskatchewan. At least six land grant railways with no constructed mileage in Saskatchewan selected over 1.3 million acres in the province.

Canadian Pacific Railway

The Canadian Pacific Railway including its subsidiaries received land grants in Saskatchewan totaling approximately 9,865,000 acres. The original grant was to be taken in alternate sections in each township (all odd numbered except 11 and 29), extending back 24 miles deep on either side of the main line from Winnipeg to Jasper House. (Sections 11 and 29 were set aside under the Act to provide for the building of schools. Monies realized from the sale of these lands held back by the federal Crown were to be used for schools and education purposes). The company was also to select additional lands. Over 1 million acres of land was held by the CPR in the Battleford Land registration district in the North West area of the province. Today the company holds approximately 994,000 acres of mineral rights in the province of Saskatchewan.

Canadian National Railway

No fewer than 10 small railway companies were eventually combined to form the Canadian Northern Railway Company, the forerunner of today's Canadian National Railway Company. Land Grants totaling 5,728,192 acres were issued to these companies much along the same basis as used for the CNR. Today, CNR holds approximately 80,000 acres of mineral rights in the province.

Land Companies and Homestead Grants

The Homestead Grant system set aside even numbered sections (except 8 and 26) for settlement. Various land holding companies were also granted sizeable tracts of lands, under the premise of bringing in settlers. Some of the notable ones who received grants in Saskatchewan were Canada North West Land Company, Winnipeg Western Land Corporation and Carrot River Valley Land Company. In most cases the companies retained the mineral rights when the land was transferred to the settler.

When a settler applied for his homestead the following rules regarding mineral rights applied:

- For mineral rights lying east of the third meridian, mineral rights were not reserved to the federal Crown in any homestead grants issued up to the 11th of January 1890

(with the exception of gold and silver). After the 11th of January 1890 the mineral rights for lands in this area were reserved to the Crown (federal) under the provisions of an Order-in-Council dated the 17th day of September 1889.

- For mineral rights lying west of the third meridian, mineral rights were not reserved before the 31st of October 1887, (with the exception of gold and silver). After this date, any homestead grants issued did not convey the minerals under the provisions of an Order-in-Council dated the 31st day of October 1887.

As a result of these two Orders-in-Council any homestead grant made after these dates should not have included the mineral rights, explaining why so many homesteaders did not own their mineral rights. However, settlement prior to 1890, mostly took place in southeastern Saskatchewan, and a high percentage of freehold mineral rights exist in this area. The lands in this area lie within the Williston basin which has yielded the Weyburn, Midale, Steelman oil fields, and numerous small pools.

Prior to 1887 a copy of the grant or deed was given to the owner of the land retained by him as proof of ownership. The date and number of the grant was recorded in the lands patent register at Ottawa.

In 1887 a system of land registration known as the Torrens System was adopted by the federal government and introduced into the North West Territories. The advantages of the Torrens system was its simplicity (one title was evidence of ownership, without reference to previous dealings with the land) and ownership was guaranteed by the state. All owners were required to turn in their deeds and have them registered. Upon registration, duplicate certificates of titles were issued to them.

Natural Resources Transfer Agreement (NRTA)

In 1905, when Saskatchewan became a province, it assumed control of the land registration districts and all land titles records were transferred to the Land Titles Offices. The Federal Government continued to administer Crown lands until October 1930, and certificate of titles were issued based on the terms of the dominion grants. The natural resources were transferred to the province in October of 1930, and all records respecting Crown lands were transferred to the Department of Natural Resources. Today, Crown owned mineral rights are administered by Saskatchewan Energy and Mines.

After 1930, when the province had gained control over Crown land, it was found that when titles to lands were being transferred to individuals the minerals were also included. The province consequently took steps to remedy this situation by adding certain sections to *The Land Titles Act*, which provided that, where any sale of Crown lands took place, the mineral rights were to be retained by the Crown.

The total area of the province of Saskatchewan is 251,700 square miles or approximately 160 million acres. The surveyed area of the province is approximately 80 million acres, with the province receiving 55 million acres of mineral rights at the time of the transfer in

1930. The mineral rights transferred were unpatented minerals or those reserved in the original grants. Any federal monies expended on lands which included the minerals were to remain with the Dominion Government such as the Department of Transport, Military Reserves and Federal Parks. Also, mineral rights in all Indian reserves were to remain under the administration of the federal government. At the present time Ottawa, through its various agencies, still administrates 2.5 million acres of mineral rights in Saskatchewan.

At the time of the transfer in 1930 there were approximately 24.7 million acres of freehold rights in the province. Today this figure stands at 17.6 million acres, due mainly to foreclosures and transfers under the provisions of *The Mineral Taxation Act*.

A breakdown of the freehold acreage into various ownership categories is as follows:

Large Corporations =	4.5 million
Federal Government =	2.5 million
Small Corporations and individuals =	10.6 million
Total =	17.6 million

With freehold acreage at 17.6 million acres, the province administers 62.4 million acres of mineral rights in the surveyed area. In the unsurveyed area the province has virtually control of all minerals with the exception of some Hudson's Bay Company reserves.

Provincial Administration of Crown Mineral Lands

When the province began its administration of its resources under the 1930 agreement, the minerals under its jurisdiction were those that were reserved in the original grant. The surface title bore the notation "Mineral in the Crown" and no title was issued for these minerals. The next 50 years has seen certain legislation passed and decisions made that accounts for the various types of Crown mineral lands that exist today. The more significant Acts are discussed in more detail in the following pages:

The Mineral Taxation Act

The Mineral Taxation Act became effective on January 1, 1945 and levied a tax on all mineral owners of 3 cents an acre per year or a minimum of $1.00 per title.

In 1948 the Canadian Pacific Railway Company commenced a court action to test the validity of *The Mineral Taxation Act.* An injunction was granted at this time forbidding the forfeiture of any CPR mineral rights for non-payment of taxes until the case was finally resolved. When the injunction was granted, the provincial government suspended the enforcement provisions of the act, and no assessments for the tax were sent out till 1954. However, enforcement of the act had commenced in 1947 in the Moose Jaw and Regina Land Titles offices, and continued until the suspension in 1948.

About 3000 individuals had allowed their rights to be forfeited, but in 1950 and 1951 these forfeited rights were offered for revestment. About 97% of these rights were

restored to the original owners, and the mineral titles that were issued under this revestment bears the wording "which were acquired by His Majesty the King". At first glance one would assume that the minerals are held by the Crown, but the title is so constructed that the minerals are in fact in the original owner's name.

In July 1952 the Supreme Court ruled and *The Mineral Taxation Act* was valid in every respect. An appeal to the Privy council was dropped, and the administration of the act continued. Enforcement of the forfeiture proceedings was postponed unit 1958, when all the taxpayers in arrears began to receive a warning of impending forfeiture of minerals, and if the tax remained unpaid, forfeited to the Crown.

Effective January 1, 1965 individuals who held title to minerals which did not exceed 3200 acres were exempted from the minerals taxation provisions of *The Mineral Taxation Act*.

The current rate for mineral rights tax is $1.50 an acre, which has been in effect since January 1, 1992. Since 1958 to the present tax year approximately 6.0 million acres have been either forfeited or transferred to province in lieu of mineral land taxes owing. These forfeited minerals may have been for all minerals or for specific minerals (i.e., coal, coal and petroleum and coal, petroleum and valuable stone).

The Oil and Gas Conservation, Stabilization and Development Act, 1973

Effective January 1, 1974 legislation was passed that empowered the Crown to acquire certain oil and gas rights from producing freehold properties. The oil and gas rights were acquired from owners who had more than 1280 net producing acres. All oil and gas rights down to and including the producing horizon were acquired and for the spacing unit the producing well was situated on. The Act acquired both oil and gas rights regardless of whether the well was producing oil or gas. The Crown also honored the registered freehold leases in existence at the time of the transfer and compensation to the previous owner is based on the freehold royalty rate but at the price of oil or gas at December 31, 1973. If no freehold lease was in existence at the time of the transfer, a Crown lease was issued and compensation in these cases was based on the Crown lease and Crown royalty structure in place on December 1, 1973. The Crown had 1100 mineral titles issued for this stratified acquisition which covered approximately 180 thousand acres of producing lands and affected the mineral rights of 13 corporations. These are the only lands that are to be referred to as "Crown Acquired", when dealing with provincial mineral rights.

Until 1990, the amount of compensation paid to former mineral owners of Crown-acquired land was based on the lease rate multiplied by the production volume multiplied by the premium well head price of oil established at December 31, 1973. In 1990, an amendment to The Crown Minerals Act was introduced and passed which capped the amount of compensation payable to any one compensation receiver to $50,000./annum. This cap reduced an annual provincial expenditure from $2.8 million to $.8 million. Many of the compensation receivers affected by this cap filed a class action lawsuit against the province. In 1996, an out of court settlement was reached. The Crown is prepared to

consider an equitable replacement instrument for annual cash payments being made to remaining compensation receivers.

Trust Lands

In the late 40s and early 50s small land companies engaged in a program of buying minerals from individuals in the province. Many of these agreements left the individual with a trust certificate entitling him to a certain percentage of the mineral rights. In most cases the trust certificate was for 20% and in some cases the original owner was issued two certificates; one for 25% of the oil and gas rights and the other for all mines and minerals except the oil and gas rights.

In 1962 a mineral rights re-negotiation board was established to review these transactions. As a result an offer was made wherein the trust certificate holder could exchange his trust certificate for a gross overriding royalty certificate which in most cases was 4% of all oil and gas produced. Some holders of these certificates converted their 1/5 or 1/4 beneficial ownership to the royalty certificates, while others retained their 1/5 and 1/4 interests.

In 1964, all these small companies involved in these transactions along with other small land corporations came under the ownership of Scurry Rainbow Oil (Sask.) Ltd. In 1974 and 1975 Scurry transferred approximate 4500 parcels of land (mostly 1/4 section parcels) to the province in lieu of mineral taxes owing. The Crown accepted the transfers to these mineral rights subject to the beneficial or trust interests.

Until 1992, if one wished to post these lands at a Crown Petroleum and Natural Gas Sale, the Crown advised the party who had requested the posting that the Trust Holder must be contacted if they have not already selected one of the following options:

1) They could lease their 1/5 ownership on his own terms but the Crown must also sign the freehold lease as trustee.

2) They can authorize the Crown to act as their agent, wherein they would receive 1/5 of all the benefits the Crown derives.

1992 Act amendments made it possible for the owners of these trust certificates to obtain legal title to the minerals owned by them through the certificate. This does not preclude the ability to choose either of the above noted options, however, once trust certificates have been replaced with legal title, the Crown will only be responsible for its residual interest in the minerals. Companies will go directly to the former trust certificate holder in order to deal with their interest. To facilitate transfers, the Crown's preference is for trust holders to enter a lease on their own behalf.

Approximately 1,400 transfers of title have been executed to date to the original owners. There are about 300 left to complete. It is expected that all transfers will have take place within the next two years.

Treaty Land Entitlement Agreements

Since 1992, several Treaty Land Entitlement (TLE) Agreements have been signed between the federal government, provincial government and Saskatchewan Indian Bands. These agreements provide money to Bands for the purpose of acquiring land to add to their existing reserve land base. The purchase of land will fulfill outstanding treaty land entitlement obligations of the federal government dating back to the late 1800's. The Bands will be purchasing both surface and mineral rights.

The ability to acquire Crown mineral rights raises several issues, particularly if mineral development has occurred on lands being considered by Bands.

The province will only sell mineral rights where the surface has been acquired by the Band and the land will obtain reserve status. Bands may purchase Crown mineral rights that are under development, but only after addressing provincial transfer concerns such as the protection of third party interests and agreeing on a purchase price.

Generally speaking, the Province will not transfer mineral rights to Bands without the consent of all disposition holders. There are, however, provisions in the agreement which allow for the transfer of mineral rights in the absence of their consent. Under these circumstances, the mineral lands remain under the administration of the Province until the disposition expires and there is a guarantee that the disposition holder will retain the same benefits they would have been entitled to had the mineral rights not been sold to the Band.

It is possible for Bands to purchase the surface rights without acquiring the mineral rights, but only after a designated minimum acreage has been obtained. Where Bands have reached a point in their acreage requirements where they may choose to buy only the surface rights, provisions must be made to ensure access to provincially owned mineral rights.

Specific Claims Settlements

Specific claim settlements are settlements between the federal government and Indian Bands which, for the most part, address the unlawful alienation of former reserve lands or inadequate compensation paid by the federal government on previously surrendered lands. The federal government has initiated settlement of three claims by providing funds to the Bands for the purchase of replacement land.

While the province has no legal responsibility with regard to these types of claims, we have committed to allow the purchase of Crown-owned mineral rights in order for these bands to achieve reserve status to lands in their entirety, rather than as surface land reserves. The province has begun discussions with several Bands concerning the purchase of mineral rights under specific claim selections.

The province has experienced some mineral rights access difficulties in the past where the surface of some land has been made a reserve by the federal government without the necessary consultation with the province and mineral disposition holders concerning

access. The province continues to work with the federal government and Specific Claim Bands to resolve this problem.

Although the extent of specific claims is unclear at this point, the amount of land involved could reach 1 million acres.